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Co. (1874) 21 Wall. 389; *Railroad Co. v. Towboat Co.* (1859) 23 How. 209. Though Mr. Justice STORY assumed in *De Lovio v. Boit*, supra, that the locality rule would still determine the jurisdiction over torts, yet it has been held that admiralty would not take jurisdiction over torts occurring within the locality where the tort was not of a maritime nature, *Campbell v. Hackfeld* (1903) 125 Fed. 696, and if we assume that there may be torts of a maritime nature not happening technically upon the sea (compare *The Robert W. Parsons* (1903) 191 U. S. 17, 33) his argument in that case as to contracts would apply equally well to torts, and no other decisions than the cases following *The Plymouth*, supra, could be found against such a position. A recent case in the Supreme Court, where a vessel had injured a beacon, a fixture permanently attached to the land, seems to have assimilated torts to contracts, and to have made the maritime nature of the offense determine jurisdiction, rather than locality. *The Blackheath* (1904) 195 U. S. 361. Mr. Justice HOLMES sees distinguishing facts, but Mr. Justice BROWN, gives it this full effect, practically overruling *The Plymouth* and making the jurisdiction in admiralty in the United States co-extensive with the enlarged statutory jurisdiction of the English Admiralty, which extends to "claims for damages by any ship." Admiralty Jurisdiction Act 1861, §7. If this be the correct interpretation of the decision the locality rule has been abandoned as to torts and a rule analogous to that adopted in the case of contracts applied. The pure locality test seems to be an arbitrary one, and while the nature of a tort may at times be difficult of determination, there would seem to be no more difficulty in the case of a tort than of a contract.

When *The Plymouth* was decided Admiralty was looked upon as the agency of a centralized government and its jurisdiction regarded with suspicion; otherwise it would seem that the fact that in all the colonial charters as well as in the Virginia Statute of 1660, presumably in the minds of the framers of the Constitution, there were words conferring upon the vice-admiralty courts jurisdiction over the "seashore and coasts," might have been used to determine that case in favor of the admiralty jurisdiction, even within the locality test. See *Waring v. Clarke*, supra. The jurisdiction of our admiralty court is derived from the Constitution; it must be determined solely by the courts in constructing the constitutional grant, and since the legislature cannot extend that jurisdiction to meet modern necessities, *The Lottawanna*, supra, it is incumbent on the courts to give full effect to the broad terms of the constitutional grant.

THE POLICE POWER AND THE CONFISCATION OF PROPERTY UNLAWFULLY USED.—It is everywhere recognized that the State in the exercise of its police power may authorize the abatement of nuisances without judicial proceedings, and that the guaranty of due process of law is not thereby violated. Where property is put to a use unlawful and detrimental to the public welfare, the legislature may authorize the abatement of the unlawful use, and, if reasonably necessary to the accomplishment of this end, the destruction of the property. *Lawton v. Steele* (1890) 119 N. Y. 226; *King v. Davenport* (1881) 98 Ill. 305. So far the law is unquestioned; but may the legislature go

further and authorize without judicial proceedings the destruction of the property, where such destruction is not necessary to the abatement of the unlawful use? An apparently affirmative answer to this question has just been given by the Supreme Court of Ohio in *State v. French* (1905) 73 N. E. 216. Here the statute forbade the use under certain circumstances of nets for fishing, and directed a destruction of all nets found in unlawful use.

Statutes authorizing the destruction or forfeiture of property, where such action is unnecessary to the abatement of an unlawful use, can have but two objects: to prevent a future unlawful use, or to punish the offender. Concerning the latter of these, it is difficult to see how any valid distinction can be taken between punishment by confiscation of property unlawfully used, and punishment by any other means. If the public welfare demands that punishment without trial be inflicted by the destruction of property put to an unlawful use, it would seem to demand that punishment without trial be inflicted by other means. But it is the function of the judiciary to inflict punishment, and of the legislature to define and direct it; and it has been generally held that the power to inflict punishment was not included within the police powers of the latter body. *Lawton v. Steele*, supra, pp. 237, 239; *Hey Sing Ieck v. Anderson* (1881) 57 Cal. 251; *Fisher v. McGirr* (Mass. 1854) 1 Gray 1.

If the power to destroy property to prevent a future unlawful use exists, it must be for the reason that public policy demands it. The fact that certain property has been put to an unlawful use does not make it in itself more dangerous to the public welfare than other property of a like kind. If the public welfare demands the destruction of property unlawfully used, it would therefore demand the destruction of all property of a like kind. But the legislature may authorize the destruction of that property only which is in itself a nuisance. *Lawton v. Steele*, supra. As stated by the Indiana Court in the case of *State v. Robbins* (1890) 124 Ind. 308, property which is a nuisance per se, no one has a right to own, and the fact of its being of such a character denies the right of the owner to due process. If the property is capable of no use but an unlawful one, it is competent for the legislature to authorize its destruction. And so where the property, though capable of a lawful use, has no recognized value for any but an unlawful one. *State v. Robbins*, supra, Freund, Police Power § 520. But where a nuisance is created by property in itself entirely harmless, as where goods are left an unlawful time on a levee, the confiscation of the property without due process has been held to be unconstitutional. *Lanfear v. Mayor* (1832) 4 La. 97; *Chicago v. Union Stock Yards Co.* (1896) 164 Ill. 224. It would seem that the same result should be reached where the property though adapted to an unlawful use, is suited to other and lawful purposes, and is not a nuisance per se. In cases of this kind it has usually been held that the confiscation without judicial proceedings was unlawful. *Lawton v. Steele*, supra; *Popper v. Holmes* (1867) 44 Ill. 360; *Edson v. Crangle* (1900) 62 Ohio St. 49; and see FULLER, C. J., dissenting in *Lawton v. Steele* (1893) 152 U. S. 133. But contra, *Lawton v. Steele* (1893) 152 U. S. 133; *Weller v. Snover* (1880) 42 N. J. L. 341. It would seem therefore that the court in the principal case should have reached an opposite conclusion.